



**4910-EX-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2018-0209]**

**Qualification of Drivers; Exemption Applications; Vision**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of applications for exemption; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 11 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions will enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

**DATES:** Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA-2018-0209 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- Fax: 1-202-493-2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation” portion of the SUPPLEMENTARY INFORMATION section for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE, Room W64-224, Washington, DC 20590-0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

**SUPPLEMENTARY INFORMATION:**

**I. Public Participation**

**A. Submitting Comments**

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA-2018-0209), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, put the docket number, FMCSA-2018-0209, in the keyword box, and click “Search.” When the new screen appears, click on the “Comment Now!” button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

#### **B. Viewing Documents and Comments**

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to <http://www.regulations.gov>. Insert the docket number, FMCSA-2018-0209, in the keyword box, and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

#### **C. Privacy Act**

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at

## **II. Background**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the FMCSRs for a five-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The 11 individuals listed in this notice have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

In July 1992, the Agency first published the criteria for the Vision Waiver Program, which listed the conditions and reporting standards that CMV drivers approved for

participation would need to meet (Qualification of Drivers; Vision Waivers, 57 FR 31458, July 16, 1992). The current Vision Exemption Program was established in 1998, following the enactment of amendments to the statutes governing exemptions made by § 4007 of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 401 (June 9, 1998). Vision exemptions are considered under the procedures established in 49 CFR part 381 subpart C, on a case-by-case basis upon application by CMV drivers who do not meet the vision standards of 49 CFR 391.41(b)(10).

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past three years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA-1998-3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrated the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors – such as age, sex, geographic location, mileage driven and conviction history – are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., “Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,” Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used three consecutive years of data, comparing the experiences of drivers in the first two years with their experiences in the final year.

### **III. Qualifications of Applicants**

#### **Manuel Gonzalez**

Mr. Gonzalez, 47, has a prosthetic left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2018, his ophthalmologist stated, "The patient has good vision in his right eye and should be able to perform the driving tasks required to operate a commercial vehicle." Mr. Gonzalez reported that he has driven straight trucks for 20 years, accumulating 640,000 miles. He holds an operator's license from Illinois. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Henry J. Hughes

Mr. Hughes, 59, has had exotropia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2018, his optometrist stated, “Henry does have adequate vision for driving a commercial vehicle.” Mr. Hughes reported that he has driven straight trucks for 10 years, accumulating 250,000 miles, and tractor-trailer combinations for 31 years, accumulating 3.1 million miles. He holds a Class A CDL from Minnesota. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Frederick L. McCurry

Mr. McCurry, 58, has a macular scar in his right eye due to toxoplasmosis in 1974. The visual acuity in his right eye is light perception, and in his left eye, 20/20. Following an examination in 2018, his optometrist stated, “In my medical opinion, this patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle according to federal regulations.” Mr. McCurry reported that he has driven straight trucks for two years, accumulating 1,000 miles, and tractor-trailer combinations for 20 years, accumulating 500,000 miles. He holds a Class AM CDL from Virginia. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Luis M. Perez-Francisco

Mr. Perez-Francisco, 33, has a chorioretinal scar in his left eye due to toxoplasmosis in childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/150. Following an examination in 2018, his optometrist stated, “In my medical opinion, the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.” Mr. Perez-Francisco reported that he has driven straight trucks for six years, accumulating 90,480 miles.

He holds an operator's license from New Jersey. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Emmanuel A. Sepulveda

Mr. Sepulveda, 32, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is counting fingers, and in his left eye, 20/20. Following an examination in 2018, his optometrist stated, "I certify in my professional opinion, Mr. Sepulveda has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Sepulveda reported that he has driven straight trucks for two years, accumulating 60,000 miles, and tractor-trailer combinations for three years, accumulating 216,000 miles. He holds a Class A CDL from California. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Martin Serrano

Mr. Serrano, 58, has had a chorioretinal scar in his right eye since 1993. The visual acuity in his right eye is counting fingers, and in his left eye, 20/40. Following an examination in 2018, his ophthalmologist stated, "The patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Serrano reported that he has driven tractor-trailer combinations for 30 years, accumulating 420,000 miles. He holds a class A CDL from Illinois. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Kirby L. Sundet

Mr. Sundet, 46, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/15, and in his left eye, counting fingers. Following an examination in 2018, his optometrist stated, "After passing all testing requirements, it is my opinion that Mr.



Sundet can safely operate commercial vehicles and I recommend he be given a waiver to operate commercial vehicles.” Mr. Sundet reported that he has driven straight trucks for five years, accumulating 500,000 miles. He holds a Class A CDL from Minnesota. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Karl M. Vanderstucken

Mr. Vanderstucken, 56, has a prosthetic right eye due to a traumatic incident in 1995. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2018, his ophthalmologist stated, “In my professional opinion the patient has sufficient vision to operate a commercial vehicles [sic] driving task as required.” Mr. Vanderstucken reported that he has driven straight trucks for 26 years, accumulating 2.34 million miles. He holds a Class B CDL from Texas. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Nyrone Whyte

Mr. Whyte, 29, has complete loss of vision in his right eye due to a traumatic incident in 1998. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2018, his optometrist stated, “Mr. Whyte has met the vision criteria for driving a commercial vehicle.” Mr. Whyte reported that he has driven straight trucks for seven years, accumulating 259,000. He holds a Class A CDL from Connecticut. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Byron L. Wright

Mr. Wright, 57, has had a hamartoma in his left eye since 1991. The visual acuity in

his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2018, his ophthalmologist stated, “I believe he has sufficient vision to safely drive a commercial vehicle.” Mr. Wright reported that he has driven straight trucks for 35 years, accumulating 960,960 miles. He holds an operator’s license from Delaware. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Bradford C. Zipse

Mr. Zipse, 54, has a retinal scar in his left eye due to an infection in 2007. The visual acuity in his right eye is 20/15, and in his left eye, 20/400. Following an examination in 2018, his optometrist stated, “In my medical opinion, Mr. Zipse has sufficient vision to perform the driving tasks required to operate a commercial vehicle.” Mr. Zipse reported that he has driven straight trucks for 30 years, accumulating 750,000 miles. He holds an operator’s license from Wisconsin. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

**IV. Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments and material received before the close of business on the closing date indicated in the dates section of the notice.

Issued on: January 30, 2019.

**Larry W. Minor,**  
*Associate Administrator for Policy.*

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